

Chapter 14.25**STORM WATER AND URBAN RUNOFF MANAGEMENT**

(3364-8/97, 3620-12/03)

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14.25.010 Purpose. The United States Congress passed the Clean Water Act 33 USC §1251 *et seq.*, as amended, including §402(p) therein as a mandate, in part, that municipal separate storm sewer systems, such as in Orange County, obtain permits to "effectively prohibit non-storm water discharges into the storm sewers" and "require controls to reduce the discharge of pollutants to the maximum extent practicable." This permitting authority has been delegated by the United States Environmental Protection Agency ("EPA") to the State of California, which has authorized the State Water Resources Control Board and its local regulatory agencies, the Regional Water Quality Control Boards, to control non-point source discharges to California's waterways.

The Santa Ana and San Diego Regional Water Quality Control Boards have addressed the obligation to implement the Clean Water Act by issuing Waste Discharge Requirements governing storm water runoff for the County of Orange, Orange County Flood Control District and the incorporated cities of Orange County. These permits shall be referred to collectively herein as the National Pollution Discharge Elimination System Permit or "NPDES Permits."

The City of Huntington Beach is participating as a "Co-permittee" under the NPDES Permits in the development and adoption of an ordinance to accomplish the requirements of the Clean Water Act.

Storm water runoff is one step in the natural cycle of water. However, human activities, such as agriculture, construction and the operation and maintenance of an urban infrastructure may result in undesirable discharges of pollutants and certain sediments, which may accumulate in local drainage channels and waterways and eventually may be deposited in the waters of the United States.

The purpose of this ordinance is to participate in the improvement of water quality and comply with federal requirements for the control of urban pollutants to storm water runoff, which enters the network of storm drains throughout Orange County.

14.25.020 Definitions.

- (a) "Authorized Inspector" shall mean the Director of Public Works, Planning Director, Fire Chief or Director of Building and Safety, and persons designated by and under his/her instruction and supervision, who are assigned to investigate compliance with, detect violations of and/or take actions pursuant to this ordinance. (3620-12/03)
- (b) "City" shall mean the City of Huntington Beach, Orange County, California.

- (c) "Co-permittee" shall mean the County of Orange, the Orange County Flood Control District, and/or any one of the thirty-one (31) municipalities, including the City of Huntington Beach, which are responsible for compliance with the terms of the NPDES Permit.
- (d) "DAMP" shall mean the Orange County Drainage Area Management Plan, as the same may be amended from time to time.
- (e) "Development Project Guidance" shall mean DAMP Chapter VII and the Appendix thereto, entitled *Best Management Practices for New Development Including Nonresidential Construction Projects*, as the same may be amended from time to time.
- (f) "Discharge" shall mean any release, spill, leak, pump, flow, escape, leaching (including subsurface migration or deposition to groundwater), dumping or disposal of any liquid, semi-solid or solid substance.
- (g) "Discharge Exception" shall mean the group of activities not restricted or prohibited by this ordinance, including only:
 - (1) Discharges composed entirely of storm water;
 - (2) Discharges subject to regulation under current EPA or Regional Water Quality Control Board issued NPDES permits, State General Permits, or other waivers, permits or approvals granted by an appropriate government agency;
 - (3) Discharges from property for which best management practices set forth in the Development Project Guidance are being implemented and followed;
 - (4) Discharges to the Storm Water Drainage System from potable water line flushing, fire fighting activities, landscape irrigation systems, diverted stream flows, rising groundwater, and *de minimis* groundwater infiltration to the Storm Water Drainage System (from leaks in joints or connections or cracks in water drainage pipes or conveyance systems);
 - (5) Discharges from potable water sources, passive foundation drains, air conditioning condensation and other building roof runoff; agricultural irrigation water runoff; water from crawl space pumps, passive footing drains, lawn watering, noncommercial vehicle washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges;
 - (6) Discharges of reclaimed water generated by a lawfully permitted water treatment facility; public street wash waters when related to cleaning and maintenance by, or on behalf of, the City of Huntington Beach;
 - (7) Discharges authorized pursuant to a permit issued under the authority of the State Water Control Board or other authorized agency. Discharges allowable under the Domestic Sewage Exception; (3620-12/03)
 - (8) Discharges for which the discharger has reduced to the extent feasible the amount of Pollutants in such Discharge; and
 - (9) Discharges authorized pursuant to federal or state laws or regulations.

In any action taken to enforce this ordinance, the burden shall be on the person who is the subject of such action to establish that a Discharge was within the scope of this Discharge Exception.

- (h) "City Attorney" shall mean the City Attorney of the City of Huntington Beach and his/her designee, which counsel is authorized to take enforcement action as described herein. For purposes of criminal prosecution, only the City Attorney, or his/her designee, shall act as the City Attorney. (3620-12/03)
- (i) "EPA" shall mean the Environmental Protection Agency of the United States. (3620-12/03)
- (j) "Hearing Officer" shall mean the Director of Public Works, Planning Director, Fire Chief or Director of Building and Safety, or his/her designee, who shall preside at the administrative hearings authorized by this ordinance and issue final decisions on the matters raised therein (or) shall mean the appeals board established by separate resolution of the City Council, which shall preside at the administrative hearings authorized by this ordinance and issue final decisions on the matters raised therein. (3620-12/03)
- (k) "Invoice for Costs" shall mean the actual costs and expenses of the City of Huntington Beach, including but not limited to administrative overhead, salaries and other expenses recoverable under State law, incurred during any Inspection conducted pursuant to this ordinance or where a Notice of Noncompliance, Administrative Compliance Order or other enforcement option under this ordinance is utilized to obtain compliance with this ordinance. (3620-12/03)
- (l) "Illicit Connection" shall mean any man-made conveyance or drainage system, pipeline, conduit, inlet or outlet through which the discharge of any Pollutant to the Storm Water Drainage System occurs or may occur. The term Illicit Connection shall not include Legal Nonconforming Connections or connections to the Storm Water Drainage System that are hereinafter authorized by the agency with jurisdiction over the system at the location at which the connection is made. (3620-12/03)
- (m) "Legal Nonconforming Connection" shall mean connections to the Storm Water Drainage System existing as of the adoption of this ordinance that were in compliance with all federal, state and local rules, regulations, statutes and administrative requirements in effect at the time the connection was established, including but not limited to any discharge permitted pursuant to the terms and conditions of an individual discharge permit issued pursuant to the Industrial Waste ordinance, County Ordinance No. 703. (3620-12/03)
- (n) "New Development" shall mean all public and private residential (whether single family, multi-unit or planned unit development), industrial, commercial, retail, and other nonresidential construction projects, or grading for future construction, for which either a discretionary land use approval, grading permit, building permit or Nonresidential Plumbing Permit is required. (3620-12/03)
- (o) "Nonresidential Plumbing Permit" shall mean a plumbing permit authorizing the construction and/or installation of facilities for the conveyance of liquids other than storm water, potable water, reclaimed water or domestic sewage. (3620-12/03)
- (p) "NPDES Permit" shall mean the currently applicable municipal discharge permit(s) issued by the Regional Water Quality Control Board, Santa Ana Region (and/or the Regional Water Quality Control Board, San Diego Region, as appropriate), which permit(s) establishes waste discharge requirements applicable to storm water runoff in the City of Huntington Beach. (3620-12/03)
- (q) "Person" shall mean any natural person as well as any corporation, partnership, government entity or subdivision, trust, estate, cooperative association, joint venture, business entity, or other similar entity, or the agent, employee or representative of any of the above. (3620-12/03)

- (r) "Pollutant" shall mean any liquid, solid or semi-solid substances, or combination thereof, including and not limited to: (3620-12/03)
- (1) Artificial materials (such as floatable plastics, wood products or metal shavings);
 - (2) Household waste (such as trash, paper, and plastics; cleaning chemicals; yard wastes; animal fecal materials; used oil and fluids from vehicles, lawn mowers and other common household equipment);
 - (3) Metals and non-metals, including compounds of metals and non-metals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
 - (4) Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
 - (5) Animal wastes (such as discharge from confinement facilities, kennels, pens and recreational facilities, including, stables, show facilities, or polo fields);
 - (6) Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;
 - (7) Waste materials and wastewater generated on construction sites and by construction activities (such as painting and staining; use of sealants and glues; use of lime; use of wood preservatives and solvents; disturbance of asbestos fibers, paint flakes or stucco fragments; application of oils, lubricants, hydraulic, radiator or battery fluids; construction equipment washing; concrete pouring and cleanup; use of concrete detergents; steam cleaning or sand blasting; use of chemical degreasing or diluting agents; and use of super chlorinated water for potable water line flushing);
 - (8) Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
 - (9) Materials which contain base/neutral or acid extractable organic compounds;
 - (10) Those Pollutants defined in §1362(6) of the Federal Clean Water Act; and
 - (11) Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial uses of the receiving waters, flora or fauna of the State.
 - (12) Wash water resulting from the hosing or cleaning of gas stations, auto repair garages, and other types of automobile service stations. (3620-12/03)
 - (13) Discharges resulting from the cleaning, repair, or maintenance of any type of equipment, machinery, or facility, including motor vehicles, concrete mixing equipment, portable toilet servicing, etc. (3620-12/03)
 - (14) Wash water from mobile auto detailing and washing, steam and pressure cleaning, carpet cleaning, and other such mobile commercial and industrial activities. (3620-12/03)

- (15) Water from cleaning of municipal, industrial, and commercial sites, including parking lots, streets, sidewalks, driveways, patios, plazas, work yards and outdoor eating or drinking areas, etc. (3620-12/03)
- (16) Runoff from material storage areas or uncovered receptacles that contain chemicals, fuels, grease, oil, or other hazardous materials. (3620-12/03)
- (17) Discharges of runoff from the washing of toxic materials from paved or unpaved areas. (3620-12/03)
- (18) Discharges of pool or fountain water containing chlorine, biocides, or other chemicals; pool filter backwash containing debris and chlorine. (3620-12/03)
- (19) Restaurant or food processing facility wastes such as grease, floor mat and trash bin wash water, food waste, etc. (3620-12/03)

Any item which is duplicative of another shall not be construed to exclude either item, as the same item may be described more than one time. (3620-12/03)

- (s) "Prohibited Discharge" shall mean any Discharge which contains any Pollutant, from public or private property to: (3620-12/03)
 - (1) the Storm Water Drainage System;
 - (2) any upstream flow, which is tributary to the Storm Water Drainage System;
 - (3) any groundwater, river, stream, creek, wash or dry weather arroyo, wetlands area, marsh, coastal slough; or
 - (4) any coastal harbor, bay, or the Pacific Ocean. The term Prohibited Discharge shall not include Discharges allowable under the Discharge Exception.
- (t) "Significant Redevelopment" shall mean the rehabilitation or reconstruction of public or private residential (whether single family, multi-unit or planned unit development), industrial, commercial, retail, or other nonresidential structures, for which either a discretionary land use approval, grading permit, building permit or Nonresidential Plumbing Permit is required. (3620-12/03)
- (u) "State General Permit" shall mean either the State General Industrial Storm Water Permit or the State General Construction Permit and the terms and requirements of either or both. In the event the U.S. Environmental Protection Agency revokes the in-lieu permitting authority of the State Water Resources Control Board, then the term State General Permit shall also refer to any EPA administered storm water control program for industrial and construction activities. (3620-12/03)
- (v) "Storm Water Drainage System" shall mean street gutter, channel, storm drain, constructed drain, lined diversion structure, wash area, inlet, outlet or other facility, which is a part of or tributary to the Countywide storm water runoff system and owned, operated, maintained or controlled by County of Orange, the Orange County Flood Control District or any Co-permittee city, and used for the purpose of collecting, storing, transporting, or disposing of storm water. (3620-12/03)

14.25.030 Prohibition on illicit connections and prohibited discharges.

- (a) No Person shall:
 - (1) Construct, maintain, operate and/or utilize any Illicit Connection.
 - (2) Cause, allow or facilitate any Prohibited Discharge.
 - (3) Act, cause, permit or suffer any agent, employee, or independent contractor, to construct, maintain, operate or utilize any Illicit Connection, or cause, allow or facilitate any Prohibited Discharge.
- (b) The prohibition against Illicit Connections shall apply irrespective of whether the Illicit Connection was established prior to the date of enactment of this ordinance; however, Legal Nonconforming Connections shall not become Illicit Connections until the earlier of the following:
 - (1) For all structural improvements to property installed for the purpose of Discharge to the Storm Water Conveyance System, the expiration of five (5) years from the adoption of this ordinance.
 - (2) For all nonstructural improvements to property existing for the purpose of Discharge to the Storm Water Conveyance System, the expiration of six (6) months following delivery of a notice to the owner or occupant of the property, which states a Legal Nonconforming Connection has been identified. The notice of a Legal Nonconforming Connection shall state the date of expiration of use under this ordinance.
- (c) A civil or administrative violation of Section 14.25.030 shall occur irrespective of the negligence or intent of the violator to construct, maintain, operate or utilize an Illicit Connection or to cause, allow or facilitate any Prohibited Discharge.
- (d) If an Authorized Inspector reasonably determines that a Discharge, which is otherwise within the Discharge Exception, may adversely affect the beneficial uses of receiving waters, then the Authorized Inspector may give written notice to the owner of the property or facility that the Discharge Exception shall not apply to the subject Discharge following expiration of the thirty (30) day period commencing upon delivery of the notice. Upon expiration of the thirty (30) day period, any such Discharge shall constitute a violation of Section 14.25.030.
- (e) The owner or occupant of property on which a Legal Nonconforming Connection exists may request an administrative hearing, pursuant to the procedures set forth in Section 14.25.060 for an extension of the period allowed for continued use of the connection. A reasonable extension of use may be authorized by the Director of Public Works or City Engineer, upon consideration of the following factors:
 - (1) The potential adverse effects of the continued use of the connection upon the beneficial uses of receiving waters;
 - (2) The economic investment of the discharger in the Legal Nonconforming Connection; and
 - (3) The financial effect upon the discharger of a termination of the Legal Nonconforming Connection.

14.25.040 New Development and Significant Redevelopment.

- (a) All New Development and Significant Redevelopment shall be undertaken in accordance with:
 - (1) The DAMP, including but not limited to the Development Project Guidance; and
 - (2) Any conditions and requirements established by the Community Development Department and/or the Public Works Department, which are reasonably related to the reduction or elimination of Pollutants in storm water runoff from the project site.
- (b) Prior to the issuance of a grading permit, building permit or Nonresidential Plumbing Permit for any New Development or Significant Redevelopment, the Community Development Department and/or Public Works Department shall review the project plans and impose terms, conditions and requirements on the project in accordance with Section 14.25.040. If the New Development or Significant Redevelopment will be approved without application for a grading permit, building permit or Nonresidential Plumbing Permit, the Community Development Department and/or the Public Works Department shall review the project plans and impose terms, conditions and requirements on the project in accordance with Section 14.25.040 prior to the issuance of a discretionary land use approval or, at the city's discretion, prior to recordation of a subdivision map.
- (c) Notwithstanding the foregoing Section 14.25.040, compliance with the Development Project Guidance shall not be required for construction of a (one) single family detached residence unless the Community Development Department and/or Public Works Department determines that the construction may result in the Discharge of significant levels of a Pollutant into a tributary to the Storm Water Drainage System.
- (d) Compliance with the conditions and requirements of the DAMP shall not exempt any Person from the requirement to independently comply with each provision of this ordinance.
- (e) If the Community Development Department and/or Public Works Department determines that the project will have a *de minimis* impact on the quality of storm water runoff, then it may issue a written waiver of the requirement for compliance with the provisions of the Development Project Guidance.
- (f) The owner of a New Development or Significant Redevelopment project, or upon transfer of the property, its successors and assigns, shall implement and adhere to the terms, conditions and requirements imposed pursuant to Section 14.25.040 on a New Development or Significant Redevelopment project.
 - (1) Each failure by the owner of the property or its successors or assigns to implement and adhere to the terms, conditions and requirements imposed pursuant to Section 14.25.040 on a New Development or Significant Redevelopment project shall constitute a violation of this ordinance.
- (g) The Community Development Department and/or Public Works Department may require that the terms, conditions and requirements imposed pursuant to Section 14.25.040 be recorded with the County Recorder's office by the property owner. The signature of the owner of the property or any successive owner shall be sufficient for the recording of these terms, conditions and requirements and a signature on behalf of the city shall not be required for recordation.

(h) Cost Recovery.

The City shall be reimbursed by the project applicant for all costs and expenses incurred by the planning agency, Community Development Department and/or Public Works Department in the review of New Development or Significant Development projects for compliance with the DAMP. The Community Development Department and/or Public Works Department may elect to require a deposit of estimated costs and expenses, and the actual costs and expenses shall be deducted from the deposit, and the balance, if any, refunded to the project applicant.

(i) Litter Control.

No Person shall discard any waste material, including but not limited to common household rubbish or garbage of any kind (whether generated or accumulated at a residence, business or other location) upon any public or private property, whether occupied, open or vacant, including but not limited to any street, sidewalk, alley, right-of-way, open area or point of entry to the Storm Water Drainage System.

Every Person occupying or having charge and control of property on which a prohibited disposal of waste materials occurs shall cause the proper collection and disposal of same.

A prohibited disposal of waste materials creates a danger to public health, safety and welfare, and otherwise threatens the environment, surface waters and groundwater; therefore, any owner or occupant of property who fails to remove waste material within a reasonable time may be charged with creating a nuisance upon the property.

No Person shall discard any waste material, including but not limited to common household rubbish or garbage of any kind (whether generated or accumulated at a residence, business or other location) upon any public property, whether occupied, open or vacant, including but not limited to any street, sidewalk, alley, right-of-way, open area or point of entry to the Storm Water Drainage System. (3364-8/97)

14.25.050 Scope of Inspections.

- (a) Right to Inspect. Prior to commencing any inspection as hereinbelow authorized, the Authorized Inspector shall obtain either the consent of the owner or occupant of the property or shall obtain an administrative inspection warrant or criminal search warrant.
- (b) Entry to Inspect. The Authorized Inspector may enter property to investigate the source of any Discharge to any public street, inlet, gutter, storm drain or the Storm Water Drainage System located within the jurisdiction of the city.
- (c) Compliance Assessments. The Authorized Inspector may inspect property for the purpose of verifying compliance with this ordinance, including but not limited to:
 - (1) Identifying products produced, processes conducted, chemicals used and materials stored on or contained within the property,
 - (2) Identifying point(s) of discharge of all wastewater, process water systems and Pollutants,
 - (3) Investigating the natural slope at the location, including drainage patterns and man-made conveyance systems,
 - (4) Establishing the location of all points of discharge from the property, whether by surface runoff or through a storm drain system,

- (5) Locating any Illicit Connection or the source of Prohibited Discharge,
 - (6) Evaluating compliance with any permit issued pursuant to Section 14.25.070 hereof, and
 - (7) Investigating the condition of any Legal Nonconforming Connection.
- (d) Portable Equipment. For purposes of verifying compliance with this ordinance, the Authorized Inspector may inspect any vehicle, truck, trailer, tank truck or other mobile equipment.
- (e) Records Review. The Authorized Inspector may inspect all records of the owner or occupant of property relating to chemicals or processes presently or previously occurring on-site, including material and/or chemical inventories, facilities maps or schematics and diagrams, Material Safety Data Sheets, hazardous waste manifests, business plans, pollution prevention plans, State General Permits, Storm Water Pollution Prevention Plans, Monitoring Program Plans and any other record(s) relating to Illicit Connections, Prohibited Discharges, a Legal Nonconforming Connection or any other source of contribution or potential contribution of Pollutants to the Storm Water Drainage System.
- (f) Sample and Test. The Authorized Inspector may inspect, sample and test any area runoff, soils area (including groundwater testing), process discharge, materials within any waste storage area (including any container contents), and/or treatment system Discharge for the purpose of determining the potential for contribution of pollutants to the Storm Water Drainage System. The Authorized Inspector may investigate the integrity of all storm drain and sanitary sewer systems, any Legal Nonconforming Connection or other pipelines on the property using appropriate tests, including but not limited to smoke and dye tests or video surveys. The Authorized Inspector may take photographs or video tape, make measurements or drawings, and create any other record reasonably necessary to document conditions on the property.
- (g) Monitoring. The Authorized Inspector may erect and maintain monitoring devices for the purpose of measuring any Discharge or potential source of Discharge to the Storm Water Drainage System.
- (h) Test Results. The owner or occupant of property subject to inspection shall, on submission of a written request, receive copies of all monitoring and test results conducted by the Authorized Inspector.

14.25.060 Enforcement.

(a) Administrative Remedies.

- (1) Notice of Noncompliance. The Authorized Inspector may deliver to the owner or occupant of any property, or to any Person responsible for an Illicit Connection or Prohibited Discharge a Notice of Noncompliance. The Notice of Noncompliance shall be delivered in accordance with Section 14.25.060 of this ordinance.
- (a) The Notice of Noncompliance shall identify the provision(s) of this ordinance or the applicable permit which has been violated. The Notice of Noncompliance shall state that continued noncompliance may result in additional enforcement actions against the owner, occupant and/or Person.
- (b) The Notice of Noncompliance shall state a compliance date that must be met by the owner, occupant and/or Person; provided, however, that the compliance date may not exceed ninety (90) days unless the Authorized Inspector extends the compliance deadline an additional ninety (90) days where good cause exists for the extension.

(2) Administrative Compliance Orders.

- (a) The Authorized Inspector may issue an Administrative Compliance Order. The Administrative Compliance Order shall be delivered in accordance with Section 14.25.060 of this ordinance. The Administrative Compliance Order may be issued to:
- (i) The owner or occupant of any property requiring abatement of conditions on the property that cause or may cause a Prohibited Discharge or an Illicit Connection in violation of this ordinance;
 - (ii) The owner of property subject to terms, conditions or requirements imposed on a project in accordance with Section 14.25.040 to ensure adherence to those terms, conditions and requirements.
 - (iii) A Permittee subject to the requirements of any permit issued pursuant to Section 14.25.070 hereof to ensure compliance with the terms, conditions and requirements of the permit.
 - (iv) Any Person responsible for an Illicit Connection or Prohibited Discharge.
- (b) The Administrative Compliance Order may include the following terms and requirements:
- (i) Specific steps and time schedules for compliance as reasonably necessary to prevent the imminent threat of a Prohibited Discharge, including but not limited to a Prohibited Discharge from any pond, pit, well, surface impoundment, holding or storage area;
 - (ii) Specific steps and time schedules for compliance as reasonably necessary to discontinue any Illicit Connection;
 - (iii) Specific requirements for containment, cleanup, removal, storage, installation of overhead covering, or proper disposal of any Pollutant having the potential to contact storm water runoff;
 - (iv) Any other terms or requirements reasonably calculated to prevent the imminent threat of or continuing violations of this ordinance, including, but not limited to requirements for compliance with best management practices guidance documents promulgated by any federal, State of California or regional agency;
 - (v) Any other terms or requirements reasonably calculated to achieve full compliance with the terms, conditions and requirements of any permit issued pursuant hereto.

(3) Cease and Desist Orders.

- (a) The Authorized Inspector may issue a Cease and Desist Order. A Cease and Desist Order shall be delivered in accordance with Section 14.25.060 of this ordinance. A Cease and Desist Order may direct the owner or occupant of any property and/or other Person responsible for a violation of this ordinance to:
- (i) Immediately discontinue any Illicit Connection or Prohibited Discharge to the Storm Water Drainage System;

- (ii) Immediately contain or divert any flow of water off the property, where the flow is occurring in violation of any provision of this ordinance;
 - (iii) Immediately discontinue any other violation of this ordinance;
 - (iv) Clean up the area affected by the violation.
- (b) The Authorized Inspector may direct by Cease and Desist Order that the owner of any property or any Permittee under any permit issued pursuant to Section VIII hereof:
 - (i) Immediately cease any activity not in compliance with the terms, conditions and requirements of the applicable permit.
- (4) Recovery of Costs. The Authorized Inspector may deliver to the owner or occupant of any property, any Permittee or any other Person who becomes subject to a notice of noncompliance or administrative order, an Invoice for Costs. An Invoice for Costs shall be delivered in accordance with Section 14.25.060 of this ordinance. An Invoice for Costs shall be immediately due and payable to the city for the actual costs incurred by the City in issuing and enforcing any notice or order.
 - (a) If any owner or occupant, Permittee or any other Person subject to an invoice for costs fails to either pay the Invoice for Costs or appeal successfully the Invoice for Costs in accordance with Section 14.25.060, then the City Attorney may institute collection proceedings.
- (5) Delivery of Notice. Any Notice of Noncompliance, Administrative Compliance Order, Cease and Desist Order or Invoice of Costs to be delivered pursuant to the requirements of this ordinance shall be subject to the following:
 - (a) The notice shall state that the recipient has a right to appeal the matter as set forth in Section 14.25.060 of this ordinance.
 - (b) Delivery shall be deemed complete upon (i) personal service to the recipient; (ii) deposit in the U.S. mail, postage pre-paid for first class delivery; or (iii) facsimile service with confirmation of receipt.
 - (c) Where the recipient of notice is the owner of the property, the address for notice shall be the address from the most recently issued equalized assessment roll for the property or as otherwise appears in the current records of the city.
 - (d) Where the owner or occupant of any property cannot be located after the reasonable efforts of the Authorized Inspector, a Notice of Noncompliance or Cease and Desist Order shall be deemed delivered after posting on the property for a period of ten (10) business days.
- (6) Administrative Hearing for Notices of Noncompliance, Administrative Compliance Orders, Invoices for Costs and Adverse Determinations. Except as set forth in Paragraph 8, any Person receiving a Notice of Noncompliance, Administrative Compliance Order, a notice of Legal Nonconforming Connection, an Invoice for Costs, or any Person who is subject to any adverse determination made pursuant to this ordinance, may appeal the matter by requesting an administrative hearing. Notwithstanding the foregoing, these administrative appeal procedures shall not apply to criminal proceedings initiated to enforce this ordinance.

- (7) Request for Administrative Hearing. Any person appealing a Notice of Noncompliance, an Administrative Compliance Order, a notice of Legal Nonconforming Connection, an Invoice for Costs or an adverse determination shall, within thirty (30) days of receipt thereof, file a written request for an administrative hearing, accompanied by an administrative hearing fee as established by separate resolution, with the Office of the City Clerk, with a copy of the request for administrative hearing mailed on the date of filing to the City Administrator. Thereafter, a hearing on the matter shall be held before the Hearing Officer within forty-five (45) business days of the date of filing of the written request unless, at the reasonable discretion of the Hearing Officer and pursuant to a written request by the appealing party, a continuance of the hearing is granted.
- (8) Administrative Hearing for Cease and Desist Orders and Emergency Abatement Actions. An administrative hearing on the issuance of a Cease and Desist Order or following a emergency abatement action shall be held within five (5) business days following the issuance of the order or the action of abatement, unless the hearing (or the time requirement for the hearing) is waived in writing by the party subject to the Cease and Desist Order or the emergency abatement. A request for an administrative hearing shall not be required from the Person subject to the Cease and Desist Order or the emergency abatement action.
- (9) Hearing Proceedings. The Authorized Inspector shall appear in support of the notice, order, determination, Invoice for Costs or emergency abatement action, and the appealing party shall appear in support of withdrawal of the notice, order, determination, Invoice for Costs, or in opposition to the emergency abatement action. The City shall have the burden of supporting any enforcement or other action by a preponderance of the evidence. Each party shall have the right to present testimony and other documentary evidence as necessary for explanation of the case.
- (10) Final Decision and Appeal. The final decision of the Hearing Officer shall be issued within ten (10) business days of the conclusion of the hearing and shall be delivered by first-class mail, postage prepaid, to the appealing party. The final decision shall include notice that any legal challenge to the final decision shall be made pursuant to the provisions of Code of Civil Procedure §§1094.5 and 1094.6 and shall be commenced within ninety (90) days following issuance of the final decision. (The administrative hearing fee paid by a prevailing party in an appeal shall be refunded.)
- (a) Notwithstanding this Section 10, the final decision of the Hearing Officer in any preceding determining the validity of a Cease and Desist Order or following an emergency abatement action shall be mailed within five (5) business days following the conclusion of the hearing.
- (11) City Abatement. In the event the owner of property, the operator of a facility, a Permittee or any other Person fails to comply with any provision of a compliance schedule issued to such owner, operator, Permittee or Person pursuant to this ordinance, the Authorized Inspector may request the City Attorney to obtain an abatement warrant or other appropriate judicial authorization to enter the property, abate the condition and restore the area. Any costs incurred by the city in obtaining and carrying out an abatement warrant or other judicial authorization may be recovered pursuant to Section 14.25.060.
- (b) Nuisance.
- Any condition in violation of the prohibitions of this ordinance, including but not limited to the maintenance or use of any Illicit Connection or the occurrence of any Prohibited Discharge, shall constitute a threat to the public health, safety and welfare, and is declared and deemed a nuisance pursuant to Government Code §38771.

- (1) Court Order to Enjoin or Abatement. At the request of the Administrator, the City Attorney may seek a court order to enjoin and/or abate the nuisance.
 - (2) Notice to Owner and Occupant. Prior to seeking any court order to enjoin or abate a nuisance or threatened nuisance, the Authorized Inspector shall provide notice of the proposed injunction or abatement to the owner and occupant, if any, of the property where the nuisance or threatened nuisance is occurring.
 - (3) Emergency Abatement. In the event the nuisance constitutes an imminent danger to public safety or the environment, the Authorized Inspector may enter the property from which the nuisance emanates, abate the nuisance and restore any property affected by the nuisance. To the extent reasonably practicable, informal notice shall be provided to the owner or occupant prior to abatement. If necessary to protect the public safety or the environment, abatement may proceed without prior notice to or consent from the owner or occupant thereof and without judicial warrant.
 - (a) An imminent danger shall include, but is not limited to, exigent circumstances created by the dispersal of Pollutants, where the same presents a significant and immediate threat to the public safety or the environment.
 - (b) Notwithstanding the authority of the city to conduct an emergency abatement action, an administrative hearing pursuant to Section 14.25.060 hereinabove shall follow the abatement action.
 - (4) Reimbursement of Costs. All costs incurred by the city in responding to any nuisance, all administrative expenses and all other expenses recoverable under State law, shall be recoverable from the Person(s) creating, causing, committing, permitting or maintaining the nuisance.
 - (5) Nuisance Lien. All costs shall become a lien against the property from which the nuisance emanated and a personal obligation against the owner thereof in accordance with Government Code §38773.1 and §38773.5. The owner of record of the property subject to any lien shall be given notice of the lien prior to recording as required by Government Code §38773.1.
 - (a) At the direction of the Authorized Inspector, the City Attorney is authorized to collect nuisance abatement costs or enforce a nuisance lien in an action brought for a money judgment or by delivery to the County Assessor of a special assessment against the property in accord with the conditions and requirements of Government Code §38773.5.
- (c) Criminal Sanctions.
- (1) Prosecutor. The City Attorney may act on the request of the Authorized Inspector to pursue enforcement actions in accordance with the provisions of this ordinance.
 - (2) Infractions. Notwithstanding any penalty ordinance in the Code, any Person who may otherwise be charged with a misdemeanor under this ordinance may be charged, at the discretion of the City Attorney, with an infraction punishable by a fine of not more than \$100 for a first violation, \$200 for a second violation, and a fine not exceeding \$500 for each additional violation occurring within one year. (3620-12/03)

(3) Misdemeanors. Any Person who negligently or knowingly violates any provision of this ordinance, undertakes to conceal any violation of this ordinance, continues any violation of this ordinance after notice thereof, or violates the terms, conditions and requirements of any permit issued pursuant to this ordinance, shall be guilty of a misdemeanor punishable by a fine of not more than \$1,000 or by imprisonment for a period of not more than six (6) months, or both.

(4) Administrative Citations. (3620-12/03)

(d) Consecutive Violations.

Each day in which a violation occurs and each separate failure to comply with either a separate provision of this ordinance an Administrative Compliance Order, a Cease and Desist Order or a permit issued pursuant to this ordinance, shall constitute a separate violation of this ordinance punishable by fines or sentences issued in accordance herewith.

(e) Nonexclusive Remedies.

Each and every remedy available for the enforcement of this ordinance, shall be nonexclusive and it is within the discretion of the Authorized Inspector or City Attorney to seek cumulative remedies, except that multiple monetary fines or penalties shall not be available for any single violation of this ordinance.

(f) Citations.

Pursuant to Penal Code §836.5, the Authorized Inspector shall have the authority to cause the arrest of any Person committing a violation of this ordinance. The Person shall be released and issued a citation to appear before a magistrate in accordance with Penal Code §853.5, §853.6, and §853.9, unless the Person demands to be taken before a magistrate. Following issuance of any citation the Authorized Inspector shall refer the matter to the City Attorney.

Each citation to appear shall state the name and address of the violator, the provisions of this ordinance violated, and the time and place of appearance before the court, which shall be at least ten (10) business days after the date of violation. The Person cited shall sign the citation giving his or her written promise to appear as stated therein. If the Person cited fails to appear, the City Attorney may request issuance of a warrant for the arrest of the Person cited.

(g) Violations of Other Laws.

Any Person acting in violation of this ordinance also may be acting in violation of the Federal Clean Water Act or the State Porter-Cologne Act and other laws and also may be subject to sanctions including civil liability. Accordingly, the City Attorney is authorized to file a citizen suit pursuant to Federal Clean Water Act §505(a), seeking penalties, damages, and orders compelling compliance and other appropriate relief. The City Attorney may notify EPA Region IX, the Santa Ana or San Diego Regional Water Quality Control Boards, or any other appropriate state or local agency, of any alleged violation of this ordinance.

(h) Injunctions.

At the request of the Authorized Inspector, the City Attorney may cause the filing in a court of competent jurisdiction of a civil action seeking an injunction against any threatened or continuing noncompliance with the provisions of this ordinance.

- (1) Order for Reimbursement. Any temporary, preliminary or permanent injunction issued pursuant hereto may include an order for reimbursement to the city of all costs incurred in enforcing this ordinance, including costs of inspection, investigation and monitoring, the costs of abatement undertaken at the expense of the city, costs relating to restoration of the environment and all other expenses as authorized by law.
- (i) Other Civil Remedies.
 - (1) The Authorized Inspector may cause the City Attorney to file an action for civil damages in a court of competent jurisdiction seeking recovery of (a) all costs incurred in enforcement of the ordinance, including but not limited to costs relating to investigation, sampling, monitoring, inspection, administrative expenses, all other expenses as authorized by law, and consequential damages, (b) all costs incurred in mitigating harm to the environment or reducing the threat to human health, and (c) damages for irreparable harm to the environment.
 - (2) The City Attorney is authorized to file actions for civil damages resulting from any trespass or nuisance occurring on public land or to the Storm Water Drainage System from any violation of this ordinance where the same has caused damage, contamination or harm to the environment, public property or the Storm Water Drainage System.
 - (3) The remedies available to the city pursuant to the provisions of this ordinance shall not limit the right of the city to seek any other remedy that may be available by law.

14.25.070 Discharge Permit Procedure.

- (a) Permit. On application of the owner of property or the operator of any facility, which property or facility is not otherwise subject to the requirements of a State General Permit or a National Pollution Discharge Elimination System Permit regulating storm water discharges, the Director of Public Works may issue a permit authorizing the release of non-storm water Discharges to the Storm Water Drainage System if:
 - (1) The Discharge of material or constituents is reasonably necessary for the conduct of otherwise legal activities on the property; and
 - (2) The Discharge will not cause a nuisance, impair the beneficial uses of receiving waters, or cause any reduction in established water quality standards.
- (b) Application. The applicant shall provide all information requested by the Director of Public Works for review and consideration of the application, including but not limited to specific detail as to the activities to be conducted on the property, plans and specifications for facilities located on the property, identification of equipment or processes to be used on-site and other information as may be requested in order to determine the constituents, and quantities thereof, which may be discharged if permission is granted.
- (c) Permit Issuance. The permit shall be granted or denied by the Director of Public Works, or his/her designated representative, no later than sixty (60) business days following the completion and acceptance of the application as determined by the Director of Public Works.
 - (1) The applicant shall be notified in person or by first-class mail, postage prepaid, of the action taken.

- (d) Permit Conditions. The permit may include terms, conditions and requirements to ensure compliance with the objectives of this ordinance and as necessary to protect the receiving waters, including but not limited to:
- (1) Identification of the Discharge location on the property and the location at which the Discharge will enter the Storm Water Drainage System;
 - (2) Identification of the constituents and quantities thereof to be discharged into the Storm Water Drainage System;
 - (3) Specification of pollution prevention techniques and structural or nonstructural control requirements as reasonably necessary to prevent the occurrence of potential Discharges in violation of this ordinance;
 - (4) Requirements for self-monitoring of any Discharge;
 - (5) Requirements for submission of documents or data, such as technical reports, production data, Discharge reports, self-monitoring reports and waste manifests; and
 - (6) Other terms and conditions appropriate to ensure compliance with the provisions of this ordinance and the protection of receiving waters, including requirements for compliance with best management practices guidance documents approved by any federal, State of California or regional agency.
- (e) General Permit. At the discretion of the Director of Public Works, the permit may, in accordance with the conditions identified in Section 14.25.070 hereinabove, be prepared as a general permit applicable to a specific category of activities. If a general permit is issued, any Person intending to Discharge within the scope of the authorization provided by the general permit may do so by filing an application to Discharge with the Director of Public Works. No Discharge within the scope of the general permit shall occur until such application is so filed.
- (1) Notwithstanding the foregoing in this subsection (e), the Director of Public Works, at his discretion, may eliminate the requirement that an application for a general permit be filed for any specific activity for which a general permit has been issued.
- (f) Permit Fees. The permission to Discharge shall be conditioned upon the applicant's payment of the city's costs, in accordance with a fee schedule adopted by separate resolution, as follows:
- (1) For individually issued permits, the costs of reviewing the permit application, preparing and issuing the permit, and the costs reasonably related to administering this permit program.
 - (2) For general permits, the costs of reviewing the permit application, that portion of the costs of preparing the general permit which is reasonably attributable to the Permittee's application for the general permit, and the costs reasonably related to administering the general permit program.

14.25.080 Permit Suspension, Revocation or Modification.

- (a) The Director of Public Works may suspend or revoke any permit when it is determined that:
- (1) The Permittee has violated any term, condition or requirement of the permit or any applicable provision of this ordinance; or

- (2) The Permittee's Discharge or the circumstances under which the Discharge occurs have changed so that it is no longer appropriate to except the Discharge from the prohibitions on Prohibited Discharge contained within this ordinance; or
 - (3) The Permittee fails to comply with any schedule for compliance issued pursuant to this ordinance; or
 - (4) Any regulatory agency, including EPA or a Regional Water Quality Control Board having jurisdiction over the Discharge, notifies the city that the Discharge should be terminated.
- (b) The Director of Public Works may modify any permit when it is determined that:
- (1) Federal or state law requirements have changed in a manner that necessitates a change in the permit; or
 - (2) The Permittee's Discharge or the circumstances under which the Discharge occurs have changed so that it is appropriate to modify the permit's terms, conditions or requirements; or
 - (3) A change to the permit is necessary to ensure compliance with the objectives of this ordinance or to protect the quality of receiving waters.
- The Permittee, or, in the case of a general permit, each Person who has filed an application pursuant to Section 14.25.070, shall be informed of any change in the permit terms and conditions at least forty-five (45) business days prior to the effective date of the modified permit.
- (c) The determination that a permit shall be denied, suspended, revoked or modified may be appealed by a Permittee pursuant to the same procedures applicable to appeal of an Administrative Compliance Order hereunder. In the absence of a judicial order to the contrary, the Permittee may continue to Discharge pending issuance of the final administrative decision by the Hearing Officer.
- (d) Permit Enforcement.
- (1) Penalties. Any violation of the terms, conditions and requirements of any permit issued by the Director of Public Works shall constitute a violation of this ordinance and subject the violator to the administrative, civil and criminal remedies available under this ordinance.
 - (2) Compliance with the terms, conditions and requirements of a permit issued pursuant to this ordinance shall not relieve the Permittee from compliance with all federal, state and local laws, regulations and permit requirements applicable to the activity for which the permit is issued.
- (a) Limited Permittee Rights. Permits issued under this ordinance are for the Person or entity identified therein as the "Permittee" only, and authorize the specific operation at the specific location identified in the permit. The issuance of a Permit does not vest the Permittee with a continuing right to Discharge.

- (b) Transfer of Permits. No permit issued to any Person may be transferred to allow:

- (i) A Discharge to the Storm Water Drainage System at a location other than the location stated in the original permit; or
- (ii) A Discharge by a Person other than the Person named in the permit, provided, however, that the city may approve a transfer if written approval is obtained, in advance, from the Director of Public Works.

14.25.090 Interagency Cooperation.

- (a) The city intends to cooperate with other agencies with jurisdiction over storm water discharges to ensure that the regulatory purposes underlying storm water regulations promulgated pursuant to the Clean Water Act (33 USC §1251 et seq.) are met.
- (b) The city may, to the extent authorized by law, elect to contract for the services of any public agency or private enterprise to carry out the planning approvals, inspections, permits and enforcement authorized by this ordinance.

14.25.100 Miscellaneous.

- (a) Compliance Disclaimer.

Full compliance by any Person or entity with the provisions of this ordinance shall not preclude the need to comply with other local, state or federal statutory or regulatory requirements, which may be required for the control of the Discharge of Pollutants into storm water and/or the protection of storm water quality.

- (b) Severability.

If any provision of this ordinance or the application of the ordinance to any circumstance is held invalid, the remainder of the ordinance or the application of the ordinance to other Persons or circumstances shall not be affected.

- (c) Repeal of Prior Ordinance.

The enactment of this ordinance by city shall repeal the provisions of County Ordinance No. 703, enacted for the permitting of Discharges of industrial waste to ground or surface waters and no new Discharge permits shall be issued thereunder; provided, however, that connection to Discharge under the terms and conditions of any individual Discharge permit issued prior to the date of enactment of the Water Quality ordinance shall be allowed hereunder as a Legal Nonconforming Connection.

14.25.110 Judicial Review

The provisions of §1094.5 and §1094.6 of the *Code of Civil Procedure* set forth the procedure for judicial review of any act taken pursuant to this ordinance. Parties seeking judicial review of any action taken pursuant to this ordinance shall file such action within ninety (90) days of the occurrence of the event for which review is sought.